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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Amendment of Parts 20 and 24 of the  
Commission's Rules--Broadband  
PCS Competitive Bidding and the  
Commercial Mobile Radio Service  
Spectrum Cap

Amendment of the Commission's  
Cellular/PCS Cross-Ownership Rule

DOCKET FILE COPY ORIGINAL

WT Docket No. 96-59

GN Docket No. 90-314

**OPPOSITION OF PACIFIC BELL MOBILE SERVICES**

Radiofone, Inc. ("Radiofone") filed a Petition for Partial Reconsideration of the Commission's Report and Order, released on June 24, 1996 in the above-captioned proceeding.<sup>1</sup> In its Petition, Radiofone argues that the Commission erroneously decided to retain the 45 MHz spectrum for commercial mobile radio services. Radiofone requests that the Commission modify the 45 MHz spectrum cap so that non-wireline cellular carriers may obtain, or otherwise have an attributable interest in 30 MHz of PCS spectrum.<sup>2</sup> For the reasons explained in the following, Pacific Bell Mobile Services opposes Radiofone's request.

<sup>1</sup> In the Matter of Amendment of Parts 20 and 24 of the Commission's Rules--Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, GN Docket No. 90-314, Report and Order, released June 24, 1996 ("Order").

<sup>2</sup> Radiofone, p. 1.

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## **II. THE COMMISSION CHOSE THE APPROPRIATE PRODUCT MARKET.**

Failing to get the 45 MHz spectrum cap eliminated from all CMRS providers in the rulemaking, Radiofone now seeks to have it eliminated for A Block cellular licensees (those cellular carriers who are not affiliated with wireline telephone companies in the same market). A basis for this new argument is that the Commission incorrectly chose the product market as “mobile-two-way voice communications service.”<sup>3</sup> Radiofone argues that the Commission erred by not considering wireline telephone services.<sup>4</sup> We disagree. The Commission was directed by Congress to avoid an excessive concentration of radio licenses and to disseminate radio licenses among a wide variety of applicants.<sup>5</sup> Thus, it was reasonable for the Commission to confine its analysis to the mobile market.

## **III. THE COMMISSION BASED ITS DECISION TO RETAIN THE 45 MHz SPECTRUM CAP ON A VARIETY OF IMPORTANT CONSIDERATIONS.**

While arguing that a properly defined market would show much smaller market shares and consequently would have a much lower Herfindahl-Hirschman Index (“HHI”). Radiofone also argues that the Commission relied too heavily on the HHI on reaching its decision to retain the 45 MHz cap.<sup>6</sup>

This is incorrect. The Commission outlined other factors such as the fact that CMRS markets have significant barriers to entry which makes it difficult for new

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<sup>3</sup> Id. at p. 3.

<sup>4</sup> Id. at p. 6.

<sup>5</sup> 47 USC §309(j)(3)(B).

<sup>6</sup> Radiofone, p. 11.

entrants to discipline the behavior of incumbents.<sup>7</sup> The Commission also raised the consideration that incumbent firms have a strong economic incentive to outbid aspiring new entrants in an auction in order to forestall competition.<sup>8</sup> These factors strongly support a spectrum cap to protect against excessive concentration of licenses.

#### **IV. THE ENTIRE PREMISE OF RADIOFONE'S POSITION IS WRONG.**

Radiofone argues that the 45 MHz spectrum cap will unfairly impact cellular telephone companies because they will be unable to offer the same scope of services as offered by PCS and will lose customers.<sup>9</sup> This argument is based on the assumption that the 20 MHz of spectrum that the cellular companies can acquire is insufficient.<sup>10</sup> However, the record does not support this assumption. As the Commission notes, "As many commenters point out, an additional 20 MHz of spectrum will be sufficient to develop and provide new digital services."<sup>11</sup>

The 45 MHz cap actually works more to the detriment of PCS licensees than cellular licensees. Under the current rule, cellular licensees can acquire up to 45 MHz of CMRS spectrum in a given service territory (25 MHz cellular and 20 MHz PCS). Pacific Bell Mobile Services, which has 30 MHz of PCS spectrum cannot acquire cellular spectrum in the same service territory since that would put it over the 45 MHz cap by 10 MHz. Thus it is limited to an additional PCS spectrum block of 10 MHz for a total of 40

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<sup>7</sup> Order, p. 99.

<sup>8</sup> *Id.* at paras. 99 and 101.

<sup>9</sup> Radiofone, p. 14.

<sup>10</sup> *Id.* at n.16.

<sup>11</sup> Order, para. 103.

MHz. (Conceivably, it could try to acquire an additional 5 MHz of PCS spectrum if disaggregating is permitted but this is a less likely scenario). Consequently, under the current rules, Pacific Bell Mobile Services and other similarly situated LECs without cellular interests are likely to be faced by a competitor that holds 45 MHz of combined cellular and PCS spectrum while it would in all likelihood be limited to 40 MHz of PCS spectrum. Thus, it is difficult to accept Radiofone's argument that it is at some particular disadvantage as a cellular firm.

Radiofone also argues that by limiting the 45 MHz spectrum cap to firms that provide both wireline and cellular service in the same market, the playing field is more level. It states, "in that way, any entity could operate two out of three major communications services (wireline, cellular, 30 MHz PCS), but none could operate all three. Under the current rule, a firm like Radiofone which does not offer wireline service may operate only one of the three major services, either cellular or PCS."<sup>12</sup> This statement is blatantly incorrect. Radiofone can operate in cellular and PCS. It just can't have a 30 MHz PCS license but that does not limit its ability to offer PCS. As noted above, the record supports that 20 MHz of PCS spectrum is sufficient and it should be especially so when offered in combination with 25 MHz of cellular spectrum.

Of equal importance, Radiofone neglects to mention that it does not offer wireline service of its own choosing. Under the new Telecommunications Act of 1996, Radiofone could become a reseller of wireline service. Consequently, the one-stop shopping advantage of wireline cellular, and PCS that Radiofone claims is an inherent

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<sup>12</sup> Radiofone, p. 18.

advantage of wireline carriers<sup>13</sup> is inaccurate in several respects. We can offer PCS and our affiliate Pacific Bell can offer wireline telephone service but neither can offer cellular service. Other local exchange companies without a cellular affiliate are in a similar position. But nothing prevents Radiophone from offering one-stop shopping of wireline (through resale), PCS and cellular. In sum, the cellular carriers with or without wireline interests are not unfairly disadvantaged by the 45 MHz spectrum cap.

**V. DIVERSITY SHOULD BE MEASURED AT THE LOCAL LEVEL, NOT ON A NATIONWIDE BASIS.**

Radiofone claims that the Commission improperly measured diversity by counting the number of licensees in each market.<sup>14</sup> Radiofone argues that the Commission should have evaluated diversity by viewing the country as a whole and that by permitting non-wireline cellular carriers to have attributable interests in 30 MHz of PCS spectrum, the FCC would promote diversity by increasing the number of potential competitors across the nation.<sup>15</sup>

We disagree that the Commission improperly measured diversity by looking at local markets. For an individual consumer, the relevant market is the local one. Under standard economic theory, if there is competition in that market, the variety of offerings and prices will be greater. If a market is concentrated, the converse is true. Radiofone seeks a rule change that will reduce the number of competitors in a local market by allowing the non-wireline cellular provider to obtain 55 MHz of CMRS

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<sup>13</sup> Id. at para 19.

<sup>14</sup> Id. at p. 22.

<sup>15</sup> Id.

spectrum while its competitors are limited to 45 MHz in a single service territory. The Commission should not depart from its original conclusion that the 45 MHz spectrum cap applies to all CMRS providers since it prevents excessive concentration in a local market.

## **VI. CONCLUSION.**

Cellular providers obtained a significant victory in the above-captioned rulemaking. The Commission changed the rule to allow them to obtain an additional 10 MHz of PCS spectrum immediately. Thus, cellular providers can now hold 25 MHz of Cellular spectrum and 20 MHz of PCS spectrum. Radiophone, however, is not satisfied with this result and seeks to have the spectrum cap of 45 MHz removed for non-wireline cellular providers. However, as discussed in the foregoing, there is no basis for this

request. Pacific Bell Mobile Services respectfully requests that the Commission deny  
Radiofone's Petition.

Respectfully submitted,

PACIFIC BELL MOBILE SERVICES

A handwritten signature in cursive script, reading "Betsy Stover Granger".

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August 28, 1996

## **CERTIFICATE OF SERVICE**

I, Kachina Boyd, do hereby certify that a copy of the foregoing OPPOSITION OF PACIFIC BELL MOBILE SERVICES was mailed on this 28th day of August 1996, via first class United States mail, postage prepaid to the party listed below.

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